

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

Triple Canopy, Inc., a Constellis Company)	
)	
Employer)	
)	
and)	
)	
United Career Professionals)	
)	
Petitioner)	Case 05-RC-263989
)	
and)	
)	
Int'l Union, Security, Police, and Fire)	
Professionals of America (SPFPA) and Its)	
Local No. 287)	
)	

**PETITIONER'S OPPOSITION TO INTERVENOR SPFPA'S REQUEST
FOR REVIEW OF DECISION AND CERTIFICATION OF REPRESENTATIVE**

Petitioner United Career Professionals ("UCP"), through undersigned counsel, submits this Opposition to Intervenor SPFPA's Request for Review of the Regional Director's October 20, 2020, Decision on Objections and Certification of Representative.

UCP will, for purposes of this Opposition, assume that the following allegations set forth in SPFPA's Objections are accurate:

1. The Employer's timely filed Voter List did not include employees Jack Helm and Raymond Jackson.
2. Helm and Jackson should have properly been included in the timely filed Voter List.
3. The timely filed Voter List had incorrect addresses for Branden Hendricks, Steven Siwecki, Waidi Towolawi, and Alysha Tubbs.

The tally of ballots in this case was 50 votes for Petitioner, 19 votes for Intervenor GUSP, and six votes for Intervenor SPFPA. The Regional Director's Decision dismissed the Objections without a hearing. Petitioner believes that the Regional Director's explanation for his decision was well reasoned. The most important point there is the practical one that the number of affected voters comes nowhere near the margin of victory for UCP.

SPFPA's Requests mischaracterizes cases that have addressed Voter List inaccuracies. SPFPA cites *Garda CL Sw. & Int'l Union, Sec., Police & Fire Professionals of Am. (SPFPA)*, No. 14-RC-209886, 2019 WL 4003418 for the principle that "substantial compliance" with Voter List requirements are not adequate. Although the documents publicly available do not tell the entire story of that case, reading SPFPA's own brief in the case, submitted by the same law firm submitting the Request for Review in this case, tells a story that seems to support Petitioner's position here:

"The Regional Director did not clearly error in determining that the late service of the voter list prejudiced Petitioner.

Petitioner lost the election by a single vote. It was only after Petitioner received the second list that it learned McDonald was an eligible voter with whom to communicate.

Accordingly, late service of the voter list was prejudicial. *Tractor Co.*, 359 NLRB No. 67 (2013)(support for setting aside an election where the number of voters improperly excluded from a list constitutes an outcome determinative number); See also *Robert Orr-Sysco Food Servs.*, 338 NLRB 614 (2002)(close margins favor setting aside election results)." For the Board's convenience, SPFPA's brief in that case is attached hereto as Attachment 1.

Thus, it appears in that case that either the entire Voter List was late or that at the very least the parts of it that were late included enough votes to be outcome determinative. The two cases cited there by SPFPA show that the margin of victory as compared to the number of errors on the

Voter List is in fact important. It is not surprising that SPFPA left those case cites out of its Request for Review in the instant case.

SPFPA offers no support for its tacit contention that the Board should overlook the 44 vote margin of victory here because the Employer may have been a few days late in putting two employees on the list and putting correct addresses for four others. It flies in the face of Board policy to not allow parties to litigate matters that could not possibly have affected the outcome of the election.

The Regional Director's "substantial compliance" ruling might be less defensible if there were so many errors on the original list that the number of errors came anywhere close to the margin of victory. SPFPA ignores this.

There is no reason to set the Regional Director's decision aside, let alone to order a stay of the decision pending Board review.

Respectfully submitted,



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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that on the 26th day of October, 2020, I served the foregoing PETITIONER'S OPPOSITION TO INTERVENOR SPFPA'S REQUEST FOR REVIEW OF DECISION AND CERTIFICATION OF REPRESENTATIVE on the following at the e-mail addresses listed for each recipient:

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A handwritten signature in blue ink, reading "Justin P. Keating", written over a horizontal line.

Justin P. Keating